



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

JUN 22 2010

REPLY TO THE ATTENTION OF:

AE-17J

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

James S. Metcalf, President  
USG Interiors, Inc.  
125 South Franklin St.  
Chicago, Illinois 60606

Re: Finding of Violation and Notice of Violation issued to USG Interiors, Inc.

Dear Mr. Metcalf:

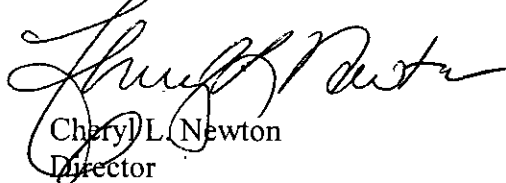
The U.S. Environmental Protection Agency is issuing the enclosed Finding of Violation and Notice of Violation (FOV/NOV) to USG Interiors, Inc. (USG). This FOV/NOV is issued in accordance with Section 113(a) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a).

EPA has determined that USG is violating the Prevention of Significant Deterioration (PSD) requirements under Section 165 of the CAA, 42 U.S.C. § 7475, the implementing regulations of Title V set forth at 40 C.F.R. Part 70, and the Wisconsin State Implementation Plan at its Walworth, Wisconsin facility. EPA has further determined that USG is violating the PSD requirements under Section 165 of the CAA, 42 U.S.C. § 7475, the implementing regulations of Title V set forth at 40 C.F.R. Part 70, and the Minnesota State Implementation Plan at its Red Wing, Minnesota facility.

EPA is offering you an opportunity to confer with us about the violations cited in the FOV/NOV. The conference will give you an opportunity to present information on the specific findings in the FOV/NOV, and the steps you will take to bring the facilities into compliance. Please plan for your technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

You may contact Jennifer Wilson at (312) 353-3115 to request a conference. You should make your request for a conference no later than 10 calendar days after you receive this letter, and we should hold any conference within 30 calendar days of your receipt of this letter.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Cheryl L. Newton".

Cheryl L. Newton  
Director

Air and Radiation Division

Enclosure

cc: Bill Baumann, Wisconsin Department of Natural Resources  
Ted Cauwels, Southeast Region, Wisconsin Department of Natural Resources  
Katie Koelfgen, Minnesota Pollution Control Agency  
Matthew E. Cohn, Meckler Bulger Tilson, Marick & Pearson, LLP

standard bcc's: official file copy w/attachment(s)  
originating organization reading file w/attachment(s)

other bcc's: John Matson, C-14J (w/attach).

Creation Date:	June 17, 2010
Filename:	USG NOV.doc
Legend:	ARD:AECAB:AECAS(IL/IN)S. Marshall

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**IN THE MATTER OF:**

**USG Interiors, Inc.  
Chicago, Illinois**

)  
)  
) **Proceedings Pursuant**  
) **Sections 113(a)(1) and (a)(3) of the**  
) **Clean Air Act,**  
) **42 U.S.C. §§ 7413(a)(1) and (a)(3)**  
)  
) **EPA-5-10-WI-07**

**FINDING OF VIOLATION AND NOTICE OF VIOLATION**

The U.S. Environmental Protection Agency is issuing this Finding of Violation and Notice of Violation (FOV/NOV) to USG Interiors, Inc. (USG) for violations of the Clean Air Act (CAA), 42 U.S.C. §§ 7401 *et seq.* and the Wisconsin State Implementation Plan (SIP) at its Walworth, Wisconsin (Walworth Facility) mineral wool production facility, and violations of the CAA and the Minnesota SIP at USG's Red Wing, Minnesota (Red Wing Facility) mineral wool production facility.

This FOV/NOV is issued pursuant to Sections 113(a)(1) and (a)(3) of the CAA, 42 U.S.C. §§ 7413(a)(1) and (a)(3). The authority to issue this FOV/NOV has been delegated to the Regional Administrator of EPA, Region 5, and re-delegated to the Director, Air and Radiation Division, Region 5.

**A. STATUTORY AND REGULATORY BACKGROUND**

**Prevention of Significant Deterioration**

1. When Congress passed the CAA in 1970, it exempted existing facilities from many of its requirements. However, Congress also intended that the exemption would not "constitute a perpetual immunity from all standards under the PSD program." *Alabama Power v. Costle*, 636 F.2d 323, 400 (D.C. Cir. 1979). Rather, when a previously-exempted facility intends to perform modifications at the facility that may significantly increase emissions, the CAA requires the company to install modern pollution control devices.

2. The Prevention of Significant Deterioration (PSD) provisions of Part C of Title I of the CAA, 42 U.S.C. §§ 7470-7492, and their implementing regulations at 40 C.F.R. § 52.21 (collectively "the PSD Program"), establish specific pre-construction requirements applicable to the construction and modification of "major emitting facilities" located in areas designated as either attainment or unclassifiable for purposes of meeting the National Ambient Air Quality Standards.

3. The PSD Program prohibits, among other things, a "major emitting facility" from constructing a "major modification" unless it has obtained a pre-construction PSD permit that applies "Best Available Control Technology" (BACT) to control emissions from the proposed modified emissions unit, and conducts an analysis to determine the air quality impacts of the modification. Sections 165(a) and 169(2)(C) of the CAA, 42 U.S.C. §§ 7475(a) and 7479(2)(C), and 40 C.F.R. § 52.21(i).
4. Pursuant to Section 169 of the CAA, 42 U.S.C. § 7479(1), a "major emitting facility" is defined to include, among others, any stationary source which emits, or has the potential to emit, 250 tons per year or more of any regulated PSD pollutant.
5. Sections 110(a) and 161 of the CAA, 42 U.S.C. §§ 7410(a) and 7471, require each state to adopt a SIP containing regulations implementing the PSD Program.
6. A state may comply with Sections 110(a) and 161 of the CAA, 42 U.S.C. §§ 7410(a) and 7471, by having its own PSD regulations approved by EPA as part of its SIP, provided that the state PSD regulations are at least as stringent as those set forth at 40 C.F.R. § 51.166.
7. Pursuant to 40 C.F.R. § 52.21(a), if a state does not have PSD regulations that EPA has approved and incorporated into its SIP, EPA may incorporate the federal PSD regulations set forth at 40 C.F.R. § 52.21 into the SIP.
8. Pursuant to 40 C.F.R. § 52.23, any person failing to comply with an approved regulatory provision of a SIP is subject to an enforcement action under Section 113 of the CAA, 42 U.S.C. § 7413.
9. On August 7, 1980, EPA disapproved Wisconsin's proposed PSD program. 45 *Fed. Reg.* 52676. Accordingly, EPA incorporated the PSD regulations of 40 C.F.R. §§ 52.21(b) through (w) into the Wisconsin SIP at 40 C.F.R. § 52.2581, and those regulations were in effect in Wisconsin until June 28, 1999.
10. Effective June 28, 1999, EPA approved and incorporated Wisconsin's PSD regulations into the Wisconsin SIP. 64 *Fed. Reg.* 28745. For all PSD violations cited in this FOV/NOV occurring at the Walworth Facility prior to June 28, 1999, the applicable regulations are the federal PSD provisions of 40 C.F.R. §§ 52.21(b) through (w) then in effect. For all PSD violations cited in this FOV/NOV at the Walworth Facility occurring on or after June 28, 1999, the applicable regulations are the Wisconsin regulations codified at Wis. Admin. Code §§ 405.01 to 405.17 then in effect.

11. On August 7, 1980, EPA disapproved Minnesota's PSD program. Accordingly, EPA incorporated the PSD regulations of 40 C.F.R. § 52.21(b) through (w) into the Minnesota SIP at 40 C.F.R. § 52.1234. 45 Fed. Reg. 52741 (August 7, 1980), as amended at 53 Fed. Reg. 18985 (May 26, 1988). *See also* Minn. R. 7007.3000. EPA delegated to the Minnesota Pollution Control Agency the authority to review and process PSD permit applications, and to implement the federal PSD program. 46 Fed. Reg. 9580 (Jan. 29, 1981). For all PSD violations cited in this FOV/NOV at the Red Wing Facility, the applicable regulations are the federal PSD provisions of 40 C.F.R. §§ 52.21(b) through (w) then in effect.
12. The PSD regulations set forth in 40 C.F.R. § 52.21 apply to any "major stationary source" that intends to construct a "major modification" in an attainment or unclassifiable area. 40 C.F.R. § 52.21(i)(2). *See also* Wis. Admin. Code § 405.01.
13. Pursuant to 40 C.F.R. § 52.21(b)(1)(i)(b) and Wis. Admin. Code § 405.02(22), a "major stationary source" is defined to include, among others, any stationary source which emits, or has the potential to emit 250 tons per year or more of any regulated PSD pollutant.
14. Pursuant to 40 C.F.R. § 52.21(b)(2)(i) and Wis. Admin. Code § 405.02(21), a "major modification" is defined as any physical change in or change in the method of operation of a major stationary source that would result in a "significant net emission increase" of any regulated PSD pollutant.
15. Pursuant to 40 C.F.R. § 52.21(b)(3)(i), a "net emissions increase" means the amount by which the sum of the following exceeds zero: (1) any increase in emissions from a particular physical change or change in the method of operation at a stationary source; and (2) any other increases and decreases in emissions at the source that are contemporaneous with the particular change and are otherwise creditable.
16. Pursuant to 40 C.F.R. § 52.21(b)(23)(i), a "significant" net emissions increase for sulfur dioxide (SO<sub>2</sub>) means an increase in the rate of SO<sub>2</sub> emissions that would equal or exceed 40 tons of SO<sub>2</sub> per year.
17. If a major stationary source in an attainment or unclassifiable area plans to construct a major modification under the foregoing definitions, then it is subject to the requirements of the PSD Program.
18. Pursuant to 40 C.F.R. §§ 52.21(i)-(r) and Wis. Admin. Code §§ 406.03, 405.07, 405.08, 405.09, 405.10, and 405.11, to construct a "major modification" in an attainment area, a "major stationary source" subject to the PSD Program must, among other things, perform an analysis of source impacts, perform air quality modeling and analysis, obtain a PSD permit, and install and operate BACT control devices for each regulated PSD pollutant for which the modification would result in a significant net emissions increase.

19. "Best available control technology" means an emissions limitation reflecting the maximum degree of reduction of each regulated PSD pollutant which the permitting authority determines is achievable for a facility on a case-by-case basis, taking into account energy, environmental and economic impacts and other costs. Section 169(3) of the CAA, 42 U.S.C. § 7479(3). *See also* Wis. Admin. Code § 405.02.

20. Pursuant to 40 C.F.R. § 52.21(i)(1), Wis. Stat. § 285.60, and Wis. Admin. Code § 405.07, no major stationary source shall commence actual construction of a major modification without a PSD permit.

21. Pursuant to 40 C.F.R. § 52.21(r)(1), any owner or operator who constructs or operates a source or modification not in accordance with its PSD application, or who commences construction without applying for and receiving an approved PSD permit, shall be subject to an enforcement action.

### **Title V Requirements**

22. Title V of the CAA, 42 U.S.C. §§ 7661-7661f, and its implementing regulations at 40 C.F.R. Part 70, establish an operating permit program for certain sources, including "major sources." The purpose of Title V is to ensure that all applicable requirements, including PSD requirements, are included in the Title V operating permit for the source.

23. Pursuant to Section 503 of the CAA, 42 U.S.C. § 7661b, and 40 C.F.R. § 70.5(a), every owner or operator of a Part 70 source, including a "major source," is required to timely submit an accurate and complete Title V permit application, including information required to be submitted with the application. *See also* Wis. Admin. Code § 407.04, and Minn. R. 7007.0200.

24. Pursuant to Section 504(a) of the CAA, 42 U.S.C. § 7661c(a), and 40 C.F.R. § 70.5, every Title V operating permit is required to contain all applicable emission limitations, standards and requirements, a schedule of compliance, and other conditions necessary to assure compliance with applicable requirements, including those contained in a SIP. *See also* Wis. Admin. Code § 407.05, and Minn. R. 7007.0500.

25. Pursuant to Section 501(2)(B) of the CAA, 42 U.S.C. § 7661, 40 C.F.R. § 70.2, Wis. Admin. Code § 407.02(4), and Minn. R. 7007.0200, a "major source" is defined, in part, as any stationary source that directly emits or has the potential to emit one hundred tons per year or more of any air pollutant.

26. Pursuant to 40 C.F.R. § 70.1(b), Wis. Admin. Code §§ 407.08 and 407.09, Minn. R. 7007.0200, and Minn. R. 7007.0500 all sources subject to the Title V operating permit program, including major sources, shall have a permit to operate that assures compliance by the source with all applicable requirements.

27. Pursuant to 40 C.F.R. § 70.2, an "applicable requirement" includes any standard or other requirement provided for in the applicable SIP approved or promulgated by EPA that implements the relevant requirements of the CAA, including any SIP revisions. *See also* Wis. Admin. Code § 407.05, and Minn. R. 7007.0500.
28. 40 C.F.R. § 70.5(a)(2) defines "complete application" to include information that is "sufficient to evaluate the subject source and its application and to determine all applicable requirements." *See also* Wis. Admin. Code § 407.06, and Minn. R. 7007.0500.
29. Pursuant to 40 C.F.R. § 70.5, an applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. *See also* Wis. Admin. Code § 407.05(9), and Minn. R. 7007.1150.
30. EPA approved Wisconsin's Title V operating program on an interim basis on March 6, 1995, and fully approved the program on December 4, 2001. 60 *Fed. Reg.* 12128, and 66 *Fed. Reg.* 62951. Wisconsin's Title V operating permit program regulations are codified at Wisconsin Administrative Code Chapter 407, and are federally enforceable pursuant to Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3).
31. EPA approved Minnesota's Title V operating program on an interim basis on June 16, 1995, and fully approved the program on December 1, 2001. 60 *Fed. Reg.* 31637, and 66 *Fed. Reg.* 62967. Minnesota's Title V operating permit program regulations are codified at Minnesota Rule 7007, and are federally enforceable pursuant to Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3).

## **B. FACTUAL BACKGROUND**

32. USG is a corporation authorized to do business in Wisconsin and Minnesota.
33. USG is a "person," as that term is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).
34. At all times relevant to this FOV/NOV, USG was the owner and/or operator of the Walworth, Wisconsin and Red Wing, Minnesota facilities.
35. Walworth, Wisconsin and Red Wing, Minnesota are located in areas that for all time periods relevant to the violations cited in this FOV/NOV are, and were, classified as attainment for SO<sub>2</sub>.
36. The Walworth Facility is a mineral wool production facility which includes one cupola for melting slag to produce mineral wool. The Red Wing Facility is a mineral wool production facility which operates two cupolas for melting slag to produce mineral wool.



37. The Red Wing Facility is a "major emitting facility" within the meaning of Section 169 of the CAA, 42 U.S.C. § 7479(1), and is a "major stationary source" within the meaning of 40 C.F.R. § 52.21(b)(1)(i)(b).

38. The Walworth Facility is a "major emitting facility" within the meaning of Section 169 of the CAA, 42 U.S.C. § 7479(1), and is a "major stationary source" within the meaning of 40 C.F.R. § 52.21(b)(1)(i)(b) and Wis. Admin. Code § 405.02(22).

39. In 1993, USG replaced the skip hoist pulley on the cupola at its Walworth Facility.

40. In 1996, USG replaced the skip hoist pulley on Cupola No. 2 at its Red Wing Facility.

## **C. NOTICE OF VIOLATION**

### **1. Violations of the Prevention of Significant Deterioration Provisions**

#### **1993 Walworth Skip Hoist Pulley Replacement**

41. The 1993 skip hoist pulley replacement project at USG's Walworth Facility set forth in Paragraph 39 constituted a "major modification," as that term is defined at 40 C.F.R. § 52.21(b)(2)(i), and Wis. Admin. Code § 405.02(21).

42. The 1993 skip hoist pulley replacement project at USG's Walworth Facility set forth in Paragraph 39 caused a "significant net emissions increase" of SO<sub>2</sub> from the cupola, as defined at 40 C.F.R. §§ 52.21(b)(3)(i) and (b)(23)(i).

43. USG failed to apply for and obtain a PSD permit for the 1993 skip hoist pulley replacement project at its Walworth Facility.

44. Before undertaking the 1993 skip hoist pulley replacement project, USG failed to install and operate pollution control equipment reflecting the application of BACT for SO<sub>2</sub> on the cupola at its Walworth Facility.

45. USG violated and continues to violate Section 165 of the CAA, 42 U.S.C. § 7475, 40 C.F.R. §§ 52.21(i), (j), (k), and (r), and Wis. Admin. Code §§ 406.03, 405.07, and 405.08, by commencing construction of, and continuing to operate, a major modification at its Walworth Facility without first applying for and obtaining the required pre-construction PSD permit, conducting a BACT analysis, and installing and operating BACT-level controls on the SO<sub>2</sub> emissions from its cupola.

#### **1996 Red Wing Skip Hoist Pulley Replacement**

46. The 1996 skip hoist pulley replacement project on Cupola No. 2 at USG's Red Wing Facility set forth in Paragraph 40 constituted a "major modification," as that term is defined at 40 C.F.R. § 52.21(b)(2)(i).

47. The 1996 skip hoist pulley replacement project at USG's Red Wing Facility set forth in Paragraph 40 caused a "significant net emissions increase" of SO<sub>2</sub> from Cupola No. 2, as defined at 40 C.F.R. §§ 52.21(b)(3)(i) and (b)(23)(i).

48. USG failed to apply for and obtain a PSD permit for the 1996 skip hoist pulley replacement project on Cupola No. 2 at its Red Wing Facility.

49. Before undertaking the 1996 skip hoist pulley replacement project, USG failed to install and operate pollution control equipment reflecting the application of BACT for SO<sub>2</sub> on Cupola No. 2 at its Red Wing Facility.

50. USG violated and continues to violate Section 165 of the CAA, 42 U.S.C. § 7475, and 40 C.F.R. §§ 52.21(i), (j), (k), and (r), by commencing construction of, and continuing to operate, a major modification at its Red Wing Facility without first applying for, and obtaining the required pre-construction PSD permit, conducting a BACT analysis, and installing and operating BACT-level controls on the SO<sub>2</sub> emissions from Cupola No. 2.

## **2. Violations of the Title V – Permit Program**

### **1993 Walworth Skip Hoist Pulley Replacement**

51. USG's Walworth Facility constitutes a "major source" as defined by Section 501(2)(B) of the CAA, 42 U.S.C. § 7661(2)(B), and Wis. Admin. Code § 407.02(4).

52. The Walworth Facility is subject to Title V of the CAA, 42 U.S.C. §§ 7661-7661f, and its implementing regulations at 40 C.F.R. Part 70, and Chapter 407 of the Wisconsin Administrative Code.

53. As set forth in Paragraph 39, USG undertook a major modification to the skip hoist pulley for the cupola at its Walworth Facility, which subjected the cupola to the PSD provisions of the CAA and its implementing regulations.

54. USG failed to include in its Title V permit application for its Walworth Facility, information pertaining to the modification identified in Paragraph 39, and failed to cite to, and describe the requirement to apply/install BACT for the cupola SO<sub>2</sub> emissions.

55. USG violated and continues to violate, Sections 503 and 504 of the CAA, 42 U.S.C. §§ 7661b, and 7661c, 40 C.F.R. §§ 70.1(b), 70.5, and the Title V provisions of the Wisconsin SIP set forth at Wis. Admin. Code §§ 407.04, 407.05, 407.05(9), 407.08, and 407.09, by failing to submit a timely, accurate, and complete Title V permit application for the Walworth Facility with information concerning all applicable requirements, and by failing to supplement, correct, or update its Walworth Title V permit application to identify all applicable requirements.

### **1996 Red Wing Skip Hoist Pulley Replacement**

56. USG's Red Wing facility constitutes a "major source" as defined by Section 501(2)(B) of the CAA, 42 U.S.C. § 7661(2)(B), and Minn. R. 7007.0200.

57. The Red Wing Facility is subject to Title V of the CAA, 42 U.S.C. §§ 7661-7661f, and its implementing regulations at 40 C.F.R. Part 70, and Minn. Rule 7007.

58. As set forth in Paragraph 40, USG undertook a major modification to Cupola No. 2 at its Red Wing Facility, which subjected Cupola No. 2 to the PSD provisions of the CAA and its implementing regulations.

59. USG failed to include in its Title V permit application for its Red Wing Facility information pertaining to the modification identified in Paragraph 40, and failed to cite to, and describe the requirement to apply/install BACT for the Cupola No. 2 SO<sub>2</sub> emissions.

60. USG violated and continues to violate, Sections 503 and 504 of the CAA, 42 U.S.C. §§ 7661b, and 7661c, 40 C.F.R. §§ 70.1(b) and 70.5, and the Title V provisions of the Minnesota SIP set forth at Minn. R. 7007.0200, 7007.0500, and 7007.1150, by failing to submit a timely, accurate, and complete Title V permit application for the Red Wing Facility with information concerning all applicable requirements, and by failing to supplement, correct, or update its Red Wing Title V permit application to identify all applicable requirements.

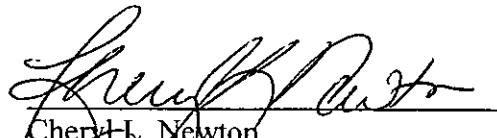
### **D. ENFORCEMENT**

61. Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1), provides that at any time after the expiration of 30 days following the date of the issuance of a Notice of Violation, the Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the applicable SIP, issue an administrative penalty order pursuant to Section 113(d), or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties.

62. Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), provides that if the Administrator finds that a person has violated, or is in violation of any requirement or prohibition of any rule promulgated under Title V of the CAA, the Administrator may issue an administrative penalty order under Section 113(d), issue an order requiring compliance with such requirement or prohibition, or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties.

**E. EFFECTIVE DATE**

Dated: 6/21/10

  
Cheryl L. Newton  
Director  
Air and Radiation Division

## CERTIFICATE OF MAILING

I, Betty Williams, certify that I sent a Notice of Violation, No. **EPA-5-10-WI-07**, by Certified Mail, Return Receipt Requested, to:

James S. Metcalf, President  
USG Interiors, Inc.  
125 South Franklin St.  
Chicago, Illinois 60606

Matthew E. Cohn  
Meckler Bulger Tilson, Marick & Pearson, LLP  
123 North Wacker Drive  
Suite 1800  
Chicago, Illinois 60606


I also certify that I sent copies of the Notice of Violation by first class mail to:

Bill Baumann  
Wisconsin Department of Natural Resources  
101 S. Webster Street  
P.O. Box 7921 (AM/7)  
Madison, Wisconsin 53707

Ted Cauwels  
Southeast Region  
Sturtevant Service Center  
Wisconsin Department of Natural Resources  
9531 Rayne Road - Suite 4  
Sturtevant, WI 53177

Katie Koelfgen  
Minnesota Pollution Control Agency  
520 Lafayette Road  
St. Paul, MN 55155-4194

On the 22<sup>nd</sup> day of June, 2010

  
Betty Williams, Administrative  
Program Assistant

Certified Mail Receipt Number: 7009 1680 0000 7666 5827 - James S. Metcalf, President  
7009 1680 0000 7666 5810 - Matthew E. Cohn